

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Tracy Bennett,)	C/A No. 4:09-3338-JFA-TER
)	
Plaintiff,)	
vs.)	ORDER
)	
Bob Olson a/k/a Olsen, Food Service; Mr.)	
Michael McCall, Warden; Steven J. Reck,)	
Food Service Branch Chief; Mr. Kirsch, Food)	
Service Branch; Mr. Claytor, Associate)	
Warden; Ms. Cocciolone, IGC; Ofc. Sewell)	
a/k/a Sowell; Ofc. Derrick Lindsay a/k/a)	
Lindsey; Mr. Najjar,)	
)	
Defendants.)	
_____)	

The *pro se* plaintiff, Tracy Bennett, brings this action pursuant to 42 U.S.C. § 1983 alleging constitutional violations by the defendants.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this action should be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. In addition, the Magistrate Judge has considered the Fourth Circuit's four-prong test² in determining his

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

² *Davis v. Williams*, 588 F.2d 69 (4th Cir. 1978); *see also Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989); and *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982).


recommendation that the action should be dismissed. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The defendants have filed a motion for summary judgment. An order was then issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying plaintiff of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Plaintiff did not respond to the motion.

The plaintiff was further advised of his right to file objections to the Report and Recommendation, which was entered on the docket on September 8, 2010. However, the plaintiff did not file any objections to the Report within the time limits prescribed. It appears that plaintiff has abandoned his lawsuit as to these defendants.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed with prejudice for failure to prosecute under Rule 41(b) and any outstanding motions are deemed moot.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge

October 20, 2010
Columbia, South Carolina